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FISCAL IMPACT STATEMENT

LS 7277 | **NOTE PREPARED:** Jan 18, 2009
BILL NUMBER: HB 1646 | **BILL AMENDED:**

SUBJECT: Loan Brokers and Uniform Securities Act.

FIRST AUTHOR: Rep. Burton | **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X GENERAL | **IMPACT:** State
X DEDICATED
FEDERAL

Summary of Legislation: This bill has the following provisions:

Application to Residential Mortgage Loans: The bill amends the statute concerning the regulation of loan brokers to specify that the law applies to residential mortgage loans.

Licensure Required: It provides that mortgage loan originators and principal managers must be licensed, rather than registered, by the Securities Commissioner (Commissioner).

Application Fees and License Renewal: It reduces the application fees for licensure as a loan broker, mortgage loan originator, or principal manager, and it requires a licensee to renew the licensee's license annually, instead of biennially.

Bond Requirements: The bill changes the amount of the bond that a loan broker licensee must maintain from $50,000 to an amount equal to: (1) $50,000; (2) $100,000; or (3) $150,000; depending on the total amount of residential mortgage loans originated by the licensee in the previous calendar year.

Three-Year Criminal History Check: It requires: (1) licensed mortgage loan originators; (2) licensed principal managers; and (3) certain individuals associated with licensed loan brokers; to submit fingerprints to the Commissioner every three years for use in criminal history background checks.

Consumer Report: It requires an applicant for licensure as a mortgage loan originator or as a principal manager to authorize the Commissioner to obtain a consumer report concerning the applicant.

Written Examinations: The bill sets forth requirements for the written examination that each applicant for licensure as a mortgage loan originator or as a principal manager is required to take.

Denial, Suspension, Revocation: It requires, rather than allows, the Commissioner to deny, suspend, or revoke a license under certain circumstances.

Penalty: The bill increases the criminal penalty for violation of the loan broker statute from a Class D to a Class C felony. It also provides that a violation is a Class B felony if the person damaged by the violation is at least 60 years of age.

Report Requirements: The bill requires a loan broker licensee to maintain a report of all residential mortgage loans originated by the licensee, including pending loans and loans that were not closed.

Prohibited Acts: It prohibits a person, in connection with a contract for loan brokerage services, from: (1) violating certain federal laws and regulations concerning residential mortgage lending; and (2) recommending a residential mortgage loan to a borrower without reasonable grounds to believe that the borrower will have the ability to repay the loan as written. It also provides that an individual who acts solely as a loan processor or underwriter shall not represent to the public that the individual may or will perform mortgage loan origination activities.

Academic Instruction: The bill provides that the academic instruction that a person must complete to obtain or maintain a license must include specified hours of instruction in certain courses.

Reports of Condition: It requires each loan broker licensee to submit periodic reports of condition to: (1) the Commissioner; and (2) the National Mortgage Licensing System and Registry.

Uniform Securities Act: It amends the Uniform Securities Act to provide that: (1) a registered broker-dealer office that is selected to complete a compliance report shall file its report not later than 45 days (instead of 90 days under current law) after being notified of its selection; and (2) a person who knowingly violates the act while using or taking advantage of a relationship based on religious affiliation or worship commits a Class B felony.

Repeal: The bill repeals a provision exempting certain persons from the loan broker statute.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Summary* - The bill could increase incarceration costs for the state by increasing the penalty for violating laws concerning the licensure of loan brokers and by establishing a new felony offense for violation of the Uniform Securities Act. It adds to the requirements for loan brokers, which potentially could result in more violations resulting in more felony offenses.

Changes to licensing fees will decrease the amount received by half, but will increase the frequency (annually) with which a licensee will have to renew. This should not change the amount received, but rather would affect the timing of revenues. The bill includes some provisions that could increase the costs of administering the licenses.

Other Administrative Costs: The bill requires periodic reports of condition and a three-year criminal history check. These costs, while passed on to the licensee, could increase costs for administering licensure.

Background:

Penalties: State expenditures would increase if an offender is incarcerated in a state prison or if an offender is incarcerated for a longer period of time. The increase the penalty for violations concerning licensure and creates a new penalty for violation of the Uniform Securities Act.

A Class D felony is punishable by a prison term ranging between 6 months and 3 years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from 2 to 8 years, and a Class B felony is punishable by a prison term ranging from 6 to 20 years. More offenders could mean increased costs to the Department of Correction (DOC). The average expenditure to house an adult offender was $20,287 in FY 2008. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately $1,825 annually, or $5 daily, per prisoner. The average length of stay in DOC facilities for all Class C felony offenders is approximately 2 years and for all Class B felony offenders is approximately 3.7 years.

Explanation of State Revenues: *Application Fees:* The bill makes licenses annual instead of biennial and decreases the fee by half. The following changes are made in the application fees.

Licence Type - Fee	Current Fee	Proposed Fee
Loan Broker - Application	$400	$200
- Ultimate Equitable Owner	$200	$100
Mortgage Loan Originator - Application	$100	$ 50
Principal Manager - Application	$200	$100

The bill removes exemptions from licensure for the following: attorneys while engaging in the practice of law; accountants while performing the practice of accountancy; broker-dealers, agents, or investment advisors otherwise registered; persons that procure, promise to procure, or assist in procuring a loan that is not subject to the Truth in Lending Act; community development corporations acting as subrecipient; and the Indiana Housing and Community Development Authority. If additional people are required to be licensed and are able to meet the standards, application fee revenue could increase.

Penalties: No change would likely occur in state revenue as a result of this bill since criminal fines and court fees are the same for Class D, C, or B felonies.

Background on Application Fees: All fee revenues are to be placed in the Loan Broker Regulation Account of the state General Fund. The fund does not revert to the state General Fund at the end of the year, and all expenses incurred in administering licenses are paid by the fund. Business license revenues were $195,760 in FY 2007 and $252,490 in FY 2008. In FY 2007, expenses paid by the fund were $131,219, and in 2008 expenses were $225,462. The increase in revenue and expenses reflects the increase in licensees in 2007 legislation.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Penalties:* No additional revenues would be expected since the court fees for all felony offenses are $120.

State Agencies Affected: DOC.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; DOC.

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